

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NO. 2021-\_\_\_-S**

**IN RE:**

<b>Application for Approval of a Sewer Agreement between Blue Granite Water Company and Shoals Landing, LLC for Phase 3 of the Shoals Landing Development</b>	) ) ) ) ) ) )	<b>BLUE GRANITE WATER COMPANY’S REQUEST FOR APPROVAL OF SEWER AGREEMENT</b>
_____		

Blue Granite Water Company (the “Company”), by and through counsel, respectfully requests the South Carolina Public Service Commission’s (“Commission”) approval of a sewer agreement (“Agreement”) between the Company and Shoals Landing, LLC (“Shoals Landing”), pursuant to S.C. Code Ann. Regs. 103-541, as related to Phase 3 of the Shoals Landing development. The Company submits that such approval without the need for notice or hearing is appropriate in this case. The Commission recently approved the developer agreements applicable to Phase 1B and Phase 2 of the Shoals Landing development through Order No. 2021-151 issued in Docket No. 2021-35-S on March 15, 2021, and Order No. 2021-272 issued in Docket No. 2021-96-S on May 12, 2021. The Company has now entered into the Agreement applicable to Phase 3.

In support of its request, the Company would show the following:

1. Applicant is a public utility currently authorized to operate wastewater systems under the jurisdiction of the Commission in South Carolina. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same.

2. Applicant’s representatives for purposes of this proceeding are as follows:

Frank R. Ellerbe, III  
 Vordman Carlisle Traywick, III  
 ROBINSON GRAY STEPP & LAFFITTE, LLC  
 1310 Gadsden Street  
 Columbia, South Carolina 29201  
 (803) 929-1400  
 fellerbe@robinsongray.com  
 ltraywick@robinsongray.com

3. The Company operates potable water production, treatment, storage, transmission, and distribution systems and sanitary wastewater collection, treatment, and effluent disposal systems, which are located in and serve various parts of the State of South Carolina, including Richland and Lexington Counties.

4. Shoals Landing, LLC is the owner/developer of certain real estate located in Lexington County, South Carolina (the “Property”), comprising Phase 3 of the Shoals Landing development.

5. The Company and Shoals Landing have negotiated the Agreement under which the Company will provide sewer service to the Property. In turn, Shoals Landing will construct and install sewer collection facilities necessary to serve the Property according to the terms and conditions of the Agreement. A copy of the Agreement is attached hereto as Attachment A.

6. The Company has sufficient sewer service available to serve the properties subject to the Agreement being filed for approval in this case.

7. The Company requests Commission approval of the Agreement, and submits that the public convenience and necessity will be served by such approval. Applicant further submits that approval of the Agreement without the need for notice or hearing is appropriate in this case. Inasmuch as the Agreement is not a “new rate, toll, rental, charge, or classification or a new regulation” under S.C. Code Ann. § 58-5-240 or “a new or changed schedule” under S.C. Code Ann. § 58-5-260, notice and hearing are not required. Because notice and hearing, where not

required by law, are discretionary on the part of the Commission,<sup>1</sup> given the nature of the Agreement, and because the requisite cost and burden of notice and a hearing would outweigh any benefit to the Company's ratepayers, approval of the Agreement without the need for notice or hearing is appropriate in this case.

8. The certification of Travis Dupree, who is Vice President of Project Management and Engineering for Blue Granite, is attached hereto as Attachment B, and certifies that the contents contained herein are true, accurate and correct to the best of his knowledge, information and belief.

WHEREFORE, the Company requests that the Agreement be approved without notice or hearing, and that Applicant be granted such other and further relief as the Commission deems just and proper.

s/Vordman Carlisle Traywick, III  
 Frank R. Ellerbe, III  
 Vordman Carlisle Traywick, III  
 ROBINSON GRAY STEPP & LAFFITTE, LLC  
 P.O. Box 11449  
 Columbia, SC 29211  
 (803) 929-1400  
 fellerbe@robinsongray.com  
 ltraywick@robinsongray.com

Attorneys for Blue Granite Water Company

November 5, 2021

---

<sup>1</sup> See S.C. Code Ann. Regs. 103-817(C)(3)(a) (“[T]he Chief Clerk *may* . . . provide the party filing the pleading a Notice of Filing, and, *where required by law*, the party at its own expense shall publish such notice one time in newspapers having general circulation in the party’s service area.” (emphasis added)); S.C. Code Ann. Regs. 103-817(C)(2) (“Where provided by law, any proceeding initiated under these rules may be disposed of without hearing by Order of the Commission within 14 days after the pleading has been accepted for filing, upon the written opinion of the Commission that the pleading on its face shows that a hearing is not necessary, in the public interest, or for the protection of substantial rights.”).

**AGREEMENT FOR SEWER SERVICE**  
**SHOALS LANDING - PHASE 3**  
**LEXINGTON AND RICHLAND COUNTIES, SC**

This Agreement is entered into this 22<sup>nd</sup> day of September, 2021 by and between Shoals Landing, LLC, existing under the laws of the State of North Carolina and authorized to do business in South Carolina (hereinafter referred to as “Developer”), and Blue Granite Water Company, a Delaware corporation authorized to do business in South Carolina (hereinafter referred to as “Utility”).

**WITNESSETH**

WHEREAS, Developer is the owner of certain real estate parcels and the portions being developed containing approximately 21.81 acres (Tax Parcel No. R03209-01-62) located in Richland County and 36.68 acres (Tax Parcel No. 001800-01-004), located in Lexington County off Irmo Drive, Irmo, South Carolina 29212, hereinafter referred to as the “Property” (see “Exhibit 1”); and,

WHEREAS, Developer desires to develop the Property into a residential development currently projected to ultimately consist of one hundred and sixty (160) single family homes, to be called “Shoals Landing”, having an estimated daily wastewater usage of 48,000 gpd when completed; and,

WHEREAS, Developer desires to develop the Property in an undetermined number of phases, this agreement will be limited to Phase 3 (see “Exhibit 2”) consisting of 40 lots, having an estimated daily wastewater usage of 12,000 gpd when completed; and,

WHEREAS, Utility is a public utility engaged in the business of furnishing sewer service to the public in its designated Blue Granite Water Company Franchised Service Territory located in Lexington and Richland Counties and the Property is located within the service territory. The Utility desires to have constructed and installed, and the Developer desires to construct and



install, the wastewater collection facilities to serve the Property subject to the terms and conditions of this Agreement; and,

WHEREAS, Developer desires Utility to provide wastewater utility service within the Property and Utility desires to provide wastewater utility service according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I**

### **Representations and Warranties of Developer**

Developer represents and warrants that:

1. Developer is the owner of or is duly authorized to act on behalf of the owner(s) of the Property; and,
2. Developer shall be responsible for obtaining and will obtain all necessary governmental approvals, permits and authorizations in connection with the construction and installation of the Facilities contemplated by this Agreement; and,
3. Developer shall cooperate with Utility in any and all applications or petitions to governmental or public authorities that Utility deems necessary, in its sole discretion, in relation to Utility's provision of wastewater utility service and its acceptance of dedication of all necessary facilities constructed and installed by Developer; and,
4. Developer shall convey to Utility, or otherwise vest in Utility (at no cost to Utility), such right, title and interest in and to such real estate as may be reasonably necessary to permit Utility to carry out the terms and conditions of this Agreement; and,
5. Developer shall convey to Utility or provide by recorded subdivision plats (at no cost to Utility) such easements or rights of way as Utility may reasonably require for the

Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form reasonably satisfactory to Utility's legal counsel and applicable regulatory bodies.

## ARTICLE II

### Obligations and Construction of Facilities by Developer

1. Facilities

Developer shall construct and install any additional necessary wastewater collection facilities to serve the Property at no cost to Utility, including but not limited to mains, manholes, odor control devices, and other facilities as are reasonably required to provide adequate wastewater service. Wastewater collection mains shall have a minimum diameter of eight (8) inches, except where otherwise approved in writing by Utility. Developer shall connect to the gravity sewer system currently installed in Phase 2 at point(s) to be approved by Utility. All construction methods and materials used by Developer for said Facilities shall be per the Utility's specifications, new, first-class, and suitable for the uses intended therefor. Developer shall obtain industry standard warranties from all contractors working on construction or installation of the Facilities and assign or otherwise transfer such warranties in writing to Utility. In addition, Developer warrants that all construction, materials, and workmanship of the Facilities shall be free of defects for one year after the Facilities (or such portion of the Facilities) are placed into service and dedicated and accepted in writing by Utility, and that the Facilities (or any portion thereof) shall operate as intended, without trouble, for a period of one year after the Facilities are placed into service and dedicated and accepted in writing by Utility.

2. All Facilities constructed and installed by Developer pursuant to this Article II shall be constructed in accordance with approved plans and specifications and constructed and

installed without cost or expense to Utility. Developer shall be responsible for all local, state and federal taxes and permitting fees arising as a result of (i) dedication of the Facilities to Utility, (ii) acceptance of the Facilities by Utility, and (iii) the new use of the Facilities by Utility to provide wastewater services under this Agreement.

3. All plans, specifications and construction of the Facilities shall be in accordance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies that may have jurisdiction thereover and must receive the written approval of Utility before construction is begun, which approval shall not be unreasonably withheld or delayed.
4. Developer shall defend, indemnify and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction or commissioning of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees, agents or assigns of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees. Further, for a period of five (5) years after Utility's acceptance of the Facilities Developer shall defend, indemnify and hold Utility harmless from and against all suits or claims, including reasonable attorneys' fees incurred by Utility to defend such suits or claims, based upon the negligent design, construction, commissioning or dedication of the Facilities by Developer.
5. Developer shall maintain general liability insurance for at least \$5 million that covers liability arising from the construction, dedication and any failure of the Facilities, and shall name Utility as an additional insured thereon.



6. Developer shall obtain, with cooperation from Utility, all requisite permits and zoning and other approvals and all else required to construct the Facilities, without cost or expense to Utility.
7. Upon written acceptance of the Facilities by Utility and interconnection with Utility's existing sewer system, all of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility, without cost or expense to Utility, as those Facilities are installed up to and including the sewer lateral, cleanout and Elder Valve at the property line or easement as shown on the plans, with the exception the sewer laterals from the Elder Valve to each single family residence (for which the owner shall retain ownership and maintenance responsibility). Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in Utility's opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall furnish Utility with lien waivers in a form reasonably satisfactory to Utility's legal counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities constructed herein. Developer agrees to provide to Utility documentary evidence, in a form satisfactory to Utility, sufficient to establish the original cost of the Facilities. Utility shall have, at all times following Utility's written acceptance of the Facilities, all right, title and interest in and to the Facilities. Developer agrees to defend, indemnify and hold Utility harmless for any claims arising from any vendor, contract, subcontractor, supplier or other individual or entity who claims any ownership interest in or encumbrance on the Facilities or any of the easements dedicated or conveyed to Utility under this Agreement.
8. Developer shall not have the right to connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, written approvals have been received from all governmental bodies and regulatory

agencies which may have jurisdiction thereover, and all applicable connection fees including any applicable taxes have been paid.

9. All connections must be inspected by Utility prior to backfilling and covering of any pipes. Written notice to Utility requesting an inspection of a connection shall be made at least forty-eight (48) hours in advance of the inspection, excluding weekends and official Utility holidays. If Developer fails to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
10. Prior to the transfer to Utility of the Facilities, Developer shall grant permanent, assignable easements satisfactory to Utility, without cost or expense to Utility, authorizing Utility to own, operate and maintain the Facilities throughout the Property and providing reasonably adequate rights of access and working space for such purposes.
11. Prior to the transfer to Utility of the Facilities, Developer shall provide a close-out package to Utility, which includes but is not limited to as-built drawings, and all other information (by both hard copy and electronic copy), reasonably required to operate, maintain, and repair the Facilities. Sewer service shall not be provided by Utility until the close-out package has been submitted by Developer and accepted as complete by Utility.
12. Upon Developer's satisfaction of its obligations under this Agreement, Utility agrees to reserve adequate utility capacity for forty (40) wastewater connections located within the Property.

### **ARTICLE III**

#### **Other**

1. Developer shall prohibit, by restricted land covenant, any owner of real estate within the Property from constructing or maintaining any private septic system within the Property.

2. Neither Developer nor any entity or individual affiliated with Developer may execute any agreement with any lot purchaser in the Property or any other parties or make any representations to any such purchasers or other parties that such purchaser or other parties have acquired any interest in the Facilities to be installed under this Agreement. Developer shall indemnify, defend and hold Utility harmless from any and all such claims raised by any party based on any statements, representations or actions by Developer.

#### **ARTICLE IV**

##### **Utility Services, Connection Fees, Rates and Charges**

1. Developer shall submit to Utility, upon execution of this Agreement, a nonrefundable Plan Review Fee of Seven Hundred Fifty Dollars and Zero Cents (\$750.00) and a nonrefundable Inspection Fee of Five Hundred Dollars and Zero Cents (\$500.00) for the development. Should the Facilities require additional inspection(s) due to improper installation, defective or unapproved materials, Developer shall pay an additional nonrefundable Two Hundred Fifty Dollars and Zero Cents (\$250.00) for each additional inspection required.
2. Developer shall pay and deliver to Utility the sum of money which is the non-recurring service connection and capacity fees ("Tap Fees") provided for under Utility's rate schedule, as approved by the Public Service Commission of South Carolina (as may be amended from time to time), including any taxes imposed on Utility for such charges, multiplied by the Single Family Equivalent ("SFE") rating set forth therein. For the Shoals Landing – Phase 3 project that is the subject of this Agreement, that sum shall be a nonrefundable fee of Thirty-eight Thousand Nine Hundred Seventy-four Dollars and Two Cents (\$38,974.02), which is based upon an estimated forty (40) SFEs, applicable taxes and Utility's current rate schedule. Contribution in Aid of Construction (CIAC)



taxes shall be calculated per Utility's Tax Gross-up Policy for Property Donated or Cash Contributed. All fees shall be paid on the date of execution of this Agreement. In addition to the above fees and taxes, Developer agrees to pay the CIAC taxes on all materials and construction costs prior to any water meters being placed in operation by Utility. If it is determined that the project contemplated by this Agreement consists of a greater number of SFEs than is estimated hereinabove, Developer shall be required to pay an additional sum to Utility for each additional SFE using the calculation provided for hereinabove, conditioned upon first receiving the approval from Utility for such increase in SFEs. In addition, Developer agrees that it will not represent to any third party that utility service is available from Utility for use within the proposed development, except (1) upon Developer's payment of the Tap Fees as provided hereinabove, (2) Developer's performance of all obligations under this Agreement; and (3) establishment of service and an account between said third party and Utility, including payment of all fees and charges authorized under Utility's approved rate schedule excepting tap fees.

3. Prior to the commencement of utility service to any parcel within the Property, the parcel's owner must pay Utility all applicable sewer fees. Such fees, usage and all other incidental rates and charges, shall be paid to Utility in accordance with Utility's rates, rules and regulations and conditions of service on file with the South Carolina Public Service Commission and then in effect. Capacity shall not be reserved for any lot, out parcel, commercial space or building for which the tap fee has not been paid.
4. Upon installation and acceptance of the Facilities and payment of all applicable connection fees Utility agrees to supply all customers within the Property with adequate and customary wastewater service and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all applicable regulatory authorities.

## **ARTICLE V**

### **Commission Filing**

1. Within thirty (30) days following the execution of this Agreement, Utility will file an application with the Commission for approval of this Agreement, in conformance with Commission rules and regulations. Developer agrees to cooperate with Utility in any proceeding resulting from such application and to reimburse Utility its reasonable attorneys' fees, costs and litigation expenses incurred for such filing in the event such application is litigated by the Office of Regulatory Staff or opposed by third parties. The provision of sewer service to the customers within the Property is subject to the Commission's authority and approval.

## **ARTICLE VI**

### **General**

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, epidemic or pandemic, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. If any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.



2. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
3. The representations, warranties and agreements contained herein shall survive, and continue in effect. Developer agrees to defend, indemnify and hold harmless Utility, its successors and assigns, against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
4. This Agreement sets forth the complete understanding between Developer and Utility as to the subject matter herein, and any amendments hereto to be effective must be made in writing and signed by both Developer and Utility.
5. Notices, correspondence and invoicing required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility:

Blue Granite Water Company  
130 South Main Street, Suite 800  
Greenville, SC 29601  
Attn: Travis Dupree, Vice President

If to Developer:

Shoals Landing, LLC  
100 Corporate Blvd  
West Columbia, SC 29169  
Attn: Greg Howell, Chief Executive Officer

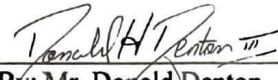
Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.

6. This Agreement may not be assigned by Developer without the written approval of Utility, which approval shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
7. This Agreement shall be governed by the laws of the State of South Carolina.
8. If this Agreement is not executed prior to September 30, 2021 then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.
9. All lots in all phases or sections of this project must be physically connected within Five (5) years of the date of this Agreement, after such date, the terms and conditions contained herein will be null and void, with no further obligations or responsibilities by Utility for those lots not physically connected. No further extensions will be granted past that date.

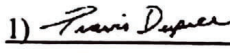

[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, the parties hereto have set their seals the day and year above first written.

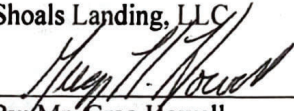
Blue Granite Water Company

  
By: Mr. Donald Denton  
Its: President


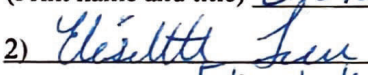
Attest/Witness:

1)   
2) 

Shoals Landing, LLC

  
By: Mr. Greg Howell  
Its: Chief Executive Officer

Attest/Witness:

1)   
(Print name and title) Eric Fannin / Land Development Manager  
2)   
(Print name) Elisabeth Luna / Accounting Supervisor

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2021-\_\_-S**

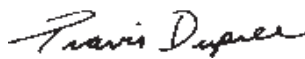
**IN RE:**

**Application for Approval of a Sewer  
 Agreement between Blue Granite Water  
 Company and Shoals Landing, LLC as  
 Related to Phase 3 of the Shoals landing  
 Development**  
 \_\_\_\_\_

**CERTIFICATION  
 REGARDING BLUE GRANITE  
 WATER COMPANY'S  
 REQUEST FOR APPROVAL  
 OF SEWER AGREEMENT**

I, Travis Dupree, state that I am employed by Blue Granite Water Company as VP, Project Management Engineering. I have read Blue Granite Water Company's Request for Approval of Sewer Agreement related to Phase 3 of the Shoals Landing development; know the contents thereof; and know that the contents are true, accurate, and correct to the best of my knowledge, information, and belief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



By: Travis Dupree

Date: 10/29/2021